UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 5

SECT	EK.	INC.	

Employer,

and

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

Case No. 5-RC-16611

Petitioner

and

UNITED SECURITY AND POLICE OFFICERS OF AMERICA (USPOA)

Intervenor

PETITIONER SPFPA'S REQUEST FOR REVIEW

Petitioner International Union, Security, Police and Fire Professionals of America (SPFPA), by its attorneys, Gregory, Moore, Jeakle & Brooks, P.C., pursuant to § 102.67 of the Board's Rules and Regulations, requests review of the Regional Director's Decision and Order (copy enclosed) in the above matter as follows:

Introduction:

On November 17, 2010, Petitioner filed a Petition seeking an election in a bargaining unit of all 9(b)(3) guards employed pursuant to the Employer's contract at the Securities Exchange Commission. On December 28, 2010, the Acting Regional Director issued a Decision and Order holding that a contract bar exists and dismissing the Petition.

A contract bar does not exist because the contract that serves as the alleged bar governed an inappropriate bargaining unit of guards and non-guards on the date the Petition was filed. The

contract was amended several weeks later to a unit of guards only, long after the Petition was filed. The Petition was wrongfully dismissed because the contract asserted as a bar must meet all criteria of being a bar on the day the Petition was filed. The Acting Regional Director's Decision and Order cites no authority in support of permitting a contract as amended after the filing of the Petition to serve as a bar and ignores existing Board authority to the contrary.

FACTS:

- 1. On November 17, 2010, Petitioner filed a Representation Petition seeking to represent security guards employed by the Employer at the SEC.
- 2. On December 28, 2010, following a hearing and briefs, the Acting Regional Director issued his Decision and Order dismissing the Petition on his finding that a contract bar exists.¹
- 3. The contract in question, signed by the parties on August 30, 2009 and expiring September 30, 2012, includes in the bargaining unit the positions of both security officers and locksmiths. Intervenor Exhibit 1, p. 3: Article 1.1 Recognition of Union: "The Company hereby recognizes the Union as the sole and exclusive bargaining representative of 'employees' of the Company...." Article 1.2 Employees: Whenever used in this Agreement, the term 'employees' shall mean all full-time and part-time security officers, locksmiths employed by the Employer...."
- 4. The locksmith position was not included by title in the Board certification.

 Rather, during negotiations for the collective bargaining agreement, the Employer requested that the locksmiths be added to the unit otherwise consisting of security officers and the Intervenor agreed. Tr. pps. 56, 62; Decision and Order, p. 4, fn 3.

¹ On January 5, 2011, Petitioner filed a Motion for Reconsideration with the Regional Director; on January 6, 2011, the Motion was denied on the basis that "it raises nothing not previously considered."

- 5. Employees in the locksmith position are not guards within the meaning of Section 9(b)(3) of the Act. See Acting Regional Director's Decision and Order, p. 5: "I find that locksmiths are not guards within the meaning of the Act." See also testimony of Dennis Roberts, tr. pps. 52-79.
- 6. The August 31, 2009 agreement was not signed by an officer, official, representative or agent of the UGSOA. Tr. 26-27

ARGUMENT:

A substantial question of law or policy is raised due to the Acting Regional Director's departure from officially reported Board precedent.

A. Inappropriate Unit

In order for a contract to serve as a contract bar, the unit covered by the agreement must be an appropriate unit under the Act. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). An agreement between an employer and a union representing a mixed guard\nonguard unit is not appropriate under the Act and will not bar a petition for a guard-only unit. *Corrections Corporation of America*, 327 NLRB 577 (1999); *Los Angeles Bonaventure Hotel*, 235 NLRB 96 (1978); *Monsanto Chemical Co.*, 108 NLRB 870 (1950). "Mixed units of guards and nonguards are never appropriate and hence do not constitute bars." <u>An Outline of Law and</u> Procedure in Representation Cases, ¶9-150 (1995 edition, p. 101).

The unit contained in the collective bargaining agreement asserted as a contract bar included both guards and non-guards and therefore was an inappropriate unit. Accordingly, the agreement could not serve as a contract bar.

On December 15, 2010, <u>28 days after the instant Petition was filed</u>, and after the parties litigated the issue at the December 2, 2010 hearing, the Employer and Intervenor entered into a written agreement removing the locksmith position from the unit described in the Collective

Bargaining Agreement. On the same date, Intervenor disclaimed interest in the locksmith position and excluded the locksmith from continuing membership in Intervenor.²

The Acting Regional Director in his Decision and Order does not discuss the inappropriateness of the unit and the longstanding Board precedent that a contract with a mixed guard/non-guard unit cannot serve as a bar to a Petition. Rather, the Acting Regional Director in his Decision and Order states only that "since the [Intervenor] has disclaimed interest in the locksmith position, and the contract meets all criteria set forth above, I find the contract is a bar to the instant petition." Decision and Order, p. 5.

A contract asserted as a bar must be signed and dated before the filing of the petition as to which the contract is asserted as a bar. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958); *Mount Clemens Metal Products Co.*, 110 NLRB 931 (1954). In the instant case, the only contract asserted as a bar that existed prior to the filing of the Petition contained an inappropriate bargaining unit consisting of guards and non-guards and thus could not serve as a bar. The new agreement, entered into on December 15, 2010, was not negotiated and executed until 4 weeks after the filing of the instant Petition.

The Acting Regional Director asserts as a contract that establishes a bar the modified agreement that excludes the non-guard locksmith position, but that modification was not made until weeks after the Petition was filed. The Acting Regional Director in his Decision and Order does not cite authority or otherwise discuss how the post-Petition modification of an inappropriate unit (to an appropriate unit) can serve to bar a Petition filed before the modification was made.³

² Intervenor's Disclaimer of Locksmith Addendum to Opposition Brief (12/16/2010), Exhibit 1.

³ Petitioner does not acknowledge that even the new modified unit is appropriate as "shift supervisors" were added to the unit in the December 15, 2010 amendment to the Agreement. The record contains no evidence with respect to these "shift supervisors" and how their inclusion in the unit may affect the appropriateness of the unit and whether with this inclusion the Agreement serves as a contract bar. Accordingly, assuming arguendo that the Board finds

The contract asserted as a bar contained an inappropriate mixed guard/non-guard bargaining unit on the date the Petition was filed and therefore does not serve as a contract bar. Accordingly, an election must be directed.

B. Contract asserted as bar does not cover all employees sought in Petition

The August 31, 2009 Agreement cannot serve as a contract bar as it does not cover all employees that encompass the unit sought in the Petition. *United Artists Communications, Inc.*, 280 NLRB 1056 (1986). The parties stipulated that the petitioned for unit is comprised of employees at SEC Headquarters in Washington, D.C., SEC Operations Center in Alexandria, VA and SEC Swing Space in Alexandria, VA. However, the SEC Swing Space employees are not included in the unit in the August 31, 2009 Agreement. See Intervenor Exhibit 1, Article 1.1 (page 3). Thus, that Agreement cannot serve as a contract bar. Although the Addendum (Intervenor Exhibit 2) for unexplained reasons lists SEC Swing Space at the top of the page, that document does not contain any language adding to or otherwise amending the Recognition Clause found in Article 1.1 of Intervenor Exhibit 1. To the contrary, the document by its own terms serves only to "amend Appendix 'A'...." For that matter, the post-Petition December 15, 2010 Amendment does not amend Article 1.1 to include the SEC Swing Space facility. There is no contract bar.

C. Contract not signed by Intervenor

The September 30, 2009 – September 30, 2012 Agreement between SecTek and the USPOA does not serve as a contract bar as it was not signed by agents or representatives of all parties. The Board has long held that for a contact to bar a petition, it must be in writing and signed by all parties. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958); *Waste Management of Maryland, Inc.*, 338 NLRB 1002 (2003). An actual agent or representative of

each party must sign the document. Thus, for example, a local union cannot sign for the international union and vice-versa. *Crothal Hospital Services, Inc.*, 270 NLRB 1420; *Filtration Engineers, Inc.*, 98 NLRB 1210 (1952).

The August 31, 2009 CBA was signed on that date by Assane Faye, purportedly as "Regional Director" on behalf of the USPOA. However, the record testimony is that on that date, Mr. Faye served as the DC Director for Petitioner SPFPA. At the time he signed the document, he admits he was not an officer of the USPOA, not an official of the USPOA, not a representative of the USPOA or an agent of the USPOA and held no position with the USPOA. Tr. 26-27. Mr. Faye held no position with the USPOA prior to September 29, 2009, a month after he signed the agreement. Tr. 26. Therefore his signature could not and did not bind the USPOA and does not serve for contract bar purposes as the USPOA having executed the document.

The Acting Regional Director concluded that prior to signing the agreement, Mr. Faye spoke to a "Clark Brown, chief negotiator for the USPOA, who directed Mr. Faye to sign the contract on behalf of USPOA" and thus concluded that he was an agent of the USPOA.

Decision and Order, p. 3. The record contains neither evidence of who Clark Browne is nor evidence that he was in a position in which he could authorize anyone to sign a legally binding document on behalf of the USPOA. All the record reveals about Clark Browne is that Mr. Faye testified that "Clark Browne was negotiating," Tr. p 21 and further that Clark Browne "was not the main decision-maker in USPOA." Tr. 32 The USPOA did not put into the record any evidence of its organizational structure as of August 31, 2009. No officer lists were introduced. No bylaws or other governing documents were entered into the record. The USPOA did not put into the record any evidence of who served as a representative agent who could bind the USPOA at that time, or who had the authority to delegate that responsibility.

The Acting Regional Director's theory is that a person for whom there is no record evidence of position or authority within the organization asked a person not related to the organization to sign a collective bargaining agreement and that signature constitutes the binding signature of a representative of the organization. There is no support for this theory in law. The agreement does not serve as a bar.

D. The Addendum is not a contract bar

The Addendum (Intervenor Exhibit 2) does not serve as a contract bar, as it is for an indefinite duration, stating only a commencement date of September 30, 2010. *Cind-R-Lite Co.*, 239 NLRB 1255 (1979). There is no provision in the Addendum that incorporates the CBA's termination date (and the Addendum by it own terms "amends" only "Appendix A" of the Agreement, which has no durational clause).

Regardless, for a contract to be a contract bar it must contain the substantial terms and conditions of employment to which the parties look for guidance in their daily operations. The Board has stated that an agreement will not constitute a contract bar where it is "limited to wages only, or to one or several provisions not deemed substantial." *Appalachian Shale Products*Co., 121 NLRB 1160, 1163 – 1165 (1958).⁴ The Addendum does not suffice as a collective bargaining agreement as it does not contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship. To the contrary, the Addendum merely provides wages and certain benefits with one additional provision relating to seniority related to posting. Most of the Addendum restates without change the previously agreed upon terms of the Agreement's Appendix A. Importantly, within the Addendum there are no provisions on union security, union rights, management rights, non-discrimination, hours or work, discharge and discipline, grievance procedure, seniority generally, training and

⁴ See, Radio Free Europe/Radio Liberty, Inc., 262 NLRB 549, 551 (1982) (where the Board refused to apply contract bar to an agreement that only discussed wage increases.)

qualification and so on. It does not provide guidance on day-to-day problems; for that matter it

contains no provision on how to resolve any issues that arise out of day-to-day problems. On its

own it cannot serve as a contact bar.

The Addendum by its own terms does not supplant the CBA or even reaffirm it. Rather,

it states that it becomes a "part" of the CBA only and "amends" only "Appendix A" by adding

wage amounts for the period commencing October 1, 2010. Thus, there can be no argument that

signing the Addendum somehow constitutes resigning the CBA.

CONCLUSION

For the above stated reasons, Petitioner requests that the Board grant this Request for

Review and issue an Order directing an election in the Petitioned-for bargaining unit.

Respectfully submitted

Gregory, Moore, Jeakle & Brooks

Dated: January 11, 2011

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Certificate of Service

I certify that I sent by e-mail and first class mail today a copy of this document to:

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Scott A. Brooks

January 11, 2011

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD REGION FIVE

SECTEK, INC.

Employer

and

Case 5-RC-16611

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA) Petitioner

and

UNITED SECURITY AND POLICE OFFICERS OF AMERICA (USPOA) Intervenor

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, as amended, a hearing on the petition was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

I. ISSUES

The Petitioner, International Union, Security, Police and Fire Professionals of America (SPFPA) seeks to represent security guards in the following unit:

All full-time and part-time security officers performing guard duties as set forth in Section 9(b)(3) of the Act, employed by the Employer at the following Securities and Exchange Commission facilities: SEC Headquarters, Washington, DC; SEC Operations Center, Alexandria, Virginia; and SEC Swing Space, Alexandria, Virginia; excluding all temporary personnel, managerial personnel, professional employees, and supervisors as defined by the Act.

There are approximately 110 employees in the petitioned-for unit.

Re: Sectek, Inc., etc. Case 5-RC-16611

The Intervenor, United Security and Police Officers of America (USPOA), contends that the petition filed on November 17, 2010 is barred by the existing collective-bargaining agreement between the Employer and the Intervenor, which was signed on August 31, 2009. The Petitioner contends that the collective-bargaining agreement is not valid because it was not properly executed by an official of USPOA. The Employer declined to take a position as to whether there is a contract bar. Even if a valid collective-bargaining agreement is in effect, the question is presented whether that contract can act as a bar in the circumstances herein, where the Petitioner seeks to represent an all-guard unit and the unit that is covered by the collective-bargaining agreement encompasses a mixed unit of guards and a locksmith. Additionally, Petitioner argues the recent inclusion of shift supervisors also is a basis for finding that the collective-bargaining agreement is not a bar to the petition. The Intervenor contends that the locksmith is a guard while the Petitioner asserts that the locksmith is a nonguard employee.

II. CONCLUSION

For the reasons that follow in this decision, and after careful consideration of the totality of the record evidence and the post-hearing briefs submitted by the parties, I find that the Employer and USPOA signed a collective-bargaining agreement on August 31, 2009. I further find that while the locksmith is not a guard, the Intervenor's disclaimer of interest in representing the locksmith both is valid and timely. Further, even assuming, arguendo, that shift supervisors are supervisors within the meaning of Section 2 (11) of the Act, their inclusion in the contracted unit does not invalidate the bar quality of the USPOA collective-bargaining agreement.

Accordingly, based on the record evidence presented at the hearing, I find that the petition is barred by the contract between the Employer and USPOA.

III. FACTS

The Employer is a contractor to the federal government, providing security services to federal agencies. The Employer holds a contract to provide security services at the Security and Exchange Commission (SEC) buildings located in Washington, D.C. and Alexandria, Virginia. In May 2009, in Case 5-RC-16306, USPOA was certified as the collective-bargaining representative of all full-time and regular part-time security officers employed by the Employer at these SEC buildings.

On August 31, 2009, the Employer and USPOA entered into a collective-bargaining agreement covering a unit of all full-time and part-time security officers and locksmiths employed by the Employer located at SEC Headquarters, 100 F Street & 600 2nd Street, NE, Washington, D.C.; and SEC Operations Center and Swing Space located in Alexandria, Virginia. The contract is effective through September 30, 2012.

The collective-bargaining agreement was signed by Assane Faye, on behalf of USPOA. At the time that the agreement was signed by Mr. Faye, he was transitioning from his employment with SPFPA to his new position as an official of USPOA. Mr. Faye did not participate in the negotiations between the Employer and USPOA that resulted in the collective-bargaining agreement at issue. However, prior to signing the agreement on behalf of USPOA, Mr. Faye spoke with Clark Brown, chief negotiator for USPOA, who directed Mr. Faye to sign the contract on behalf of USPOA. Since its execution, the contract has been enforced and followed by the Employer and USPOA. Specifically, USPOA has filed grievances and has engaged in bargaining with the Employer which resulted in an addendum signed by representatives from the Employer and USPOA on August 30, 2010. Mr. Faye served as a representative of USPOA in the negotiations leading to the addendum.

On or about December 15, 2010, USPOA disclaimed interest in the locksmith classification set forth in its contract between the Employer and USPOA¹.

IV. CONTRACT BAR

The Board has long held that, for contract-bar purposes, an agreement must meet certain formal and substantive requirements, including the requirement that the document, proposed as a bar, be signed by both parties prior to the filing of the petition that it would bar. *Appalachian Shale*, 121 NLRB 1160 (1958). The party asserting that a contract operates as a bar bears the burden of proving that the contract was signed by both parties before a petition was filed. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970). See also *Bo-Low Lamp Corp.*, 111

¹ On December 15, 2010, USPOA filed a written disclaimer of interest in representing the locksmith. A copy of the disclaimer was served on Petitioner. The Region allowed Petitioner to respond in writing to that disclaimer, and on December 21, 2010, it did so. Petitioner contends the disclaimer did not retroactively resurrect the contract bar, as it was not in place at the time the petition was filed. Additionally, Petitioner argues while the Intervenor removed the locksmith from the unit, it added shift supervisors. Petitioner does not present any evidence the disclaimer is not valid or of inconsistent action; rather, it contends only that the disclaimer is untimely. Given that the parties were given an opportunity to brief the issue and did so, I find that the issues raised by the disclaimer can be appropriately dealt with in this decision.

NLRB 505 (1955); *Appalachian Shale*. The Board also has long required, for contract-bar purposes, that the contract: (1) be signed by both parties prior to the filing of the petition that it would bar; and (2) contain substantial terms and conditions of employment sufficient to stabilize the parties bargaining relationship. See *Waste Management of Maryland, Inc.*, 338 NLRB 1002, 1002 (2003).

I find the Intervenor has met its burden of showing that it entered into a collective-bargaining agreement with the Employer. The collective-bargaining agreement was executed by USPOA and the Employer on August 30, 2009, and expires September 30, 2012. It clearly contains substantial terms and conditions of employment sufficient to stabilize the bargaining relationship between the Employer and USPOA. In making this finding, I also conclude that Assane Faye was acting as an agent of USPOA when he signed the agreement at the direction of Clark Brown. Furthermore, the Employer and USPOA have applied and enforced the agreement and negotiated and implemented an addendum to it. See *Bi-County Beverage Distributors*, 291 NLRB 466, 469 (1988) (holding that the parties' course of conduct manifested an intention to be bound to a collective-bargaining agreement).

The unit set forth in the collective-bargaining agreement includes both security officers and locksmiths.³ Locksmiths are responsible for maintaining the locks in the SEC facilities. The current locksmith works only day hours, and receives no special training or certification which is required for security officers. The locksmith's duties include producing keys, changing cores, re-pinning cores, and performing standard locksmith-type services. The locksmith does not have the same uniform as security officers and, unlike security officers, is unarmed. The locksmith does not fill in for security officers and does not possess the certification required of security officers. Under the Employer's contract with the U.S. Government, security officers must be certified as Special Police Officers; there is no such requirement for locksmiths. The locksmith

² The Board applies common law principles when examining whether a person is an agent of the employer. Agency is established when there is actual, or express, authority to engage in the conduct. Actual authority refers to the power of an agent to act on his principal's behalf when that power is created by the principal's manifestation to him. That manifestation may be either express or implied. Agency may also be established by a showing of apparent authority, which results from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe that the principal has authorized the alleged agent to perform the acts in question. See *Electrical Workers Local 98 (MCF Services)*, 342 NLRB 740, 741-742 (2004).

³ The Employer and USPOA added the locksmith classification during bargaining subsequent to the certification of the unit by the Board in Case 5-RC-16306. There is only one locksmith in the unit represented by USPOA and this individual services the SEC facilities. The locksmith has an office in SEC Headquarters. Record evidence also shows that the locksmith is a member of the USPOA.

is paid approximately \$2.00 per hour more than security officers. The locksmith interacts with security officers if a lock fails and repairs are needed. Security officers call the locksmith to examine and repair the lock. The locksmith does not have the responsibility to unlock or lock up offices, and does not monitor entrances or exits. Security officers wear a duty belt that carries a flashlight, gun, and extra ammunition. Security officers' uniforms include a shield and identifying emblem. The locksmith is unarmed and does not wear a guard-type uniform. Section 9(b)(3) of the Act defines guards as employees who "enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises." I find that locksmiths are not guards within the meaning of the Act. See Hilton Hotel Corp., 287 NLRB 359, 366 (1987); Caterpillar Tractor Co., 109 NLRB 871 (1954). The locksmiths' sole responsibility is to repair and maintain the locks at the SEC facilities. There is no record evidence that locksmiths perform or are responsible for any traditional guard duties relating to the protection of property or the enforcement of rules relating to the protection of property. However, since the Union has disclaimed interest in the locksmith position, and the contract meets all criteria set forth above, I find that the contract is a bar to the instant petition.

Lastly, Petitioner contends that the inclusion of shift supervisors in an Amendment to the contract between the Employer and USPOA warrants finding the unit inappropriate. Although the record does not address the supervisory status of any employees, I note that even assuming that shift supervisors are supervisors under the Act, Board law is clear that the inclusion of statutory supervisors in a unit does not make the unit per se inappropriate. See *Stanford Realty Associates*, 306 NLRB 1061, 1066 (1992). Where the Employer and the Union (USPOA) bargain to include supervisors in a unit covered by a collective-bargaining agreement, the Board has found that it will not set aside such a contract during its term. See *Arizona Electric Power Cooperative*, 250 NLRB 1132, 1133-1134 (1980); see also *Brinks, Inc.*, 272 NLRB 868, 871-872 (1985). Accordingly, I find that the unit in the instant case does not warrant invalidating the contract between the Employer and USPOA.

V. CONCLUSION AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

- 1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
- 2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
- 3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
- A question affecting commerce does not exist concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
- The parties stipulated that Sectek, Inc., a Virginia corporation with an office and place of business in Reston, Virginia, is engaged in the business of providing security services to various firms and institutions, including the Security and Exchange Commission in the District of Columbia and Alexandria, Virginia. During the past 12 months, a representative period, the Employer, in conducting its business operations described herein, provided services valued in excess of \$50,000 in states other than the State of Virginia.
- 6. The petition is dismissed.

RIGHT TO REQUEST REVIEW

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on January 11, 2011, at 5 p.m. (ET), unless filed electronically. Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date. Please be advised that Section

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December 28, 2010

102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁴ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

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Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select the E-Gov tab and then click on E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

(SEAL)

/s/STEVEN L. SHUSTER

Dated: December 28, 2010

Steven L. Shuster, Acting Regional Director National Labor Relations Board, Reg. 5 103 S. Gay Street, 8th Floor Baltimore, Maryland 21202

⁴ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.